

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MARIA BROMLEY and KLEBER
PAUTA, on behalf of themselves and all
others similarly situated,

Plaintiffs,

V.

SXSW LLC, and,
SXSW HOLDINGS, INC.,

Defendants.

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Civil Action No. 1:20-CV-439-LY

**DECLARATION OF JOSEPH G. SAUDER IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT,
CERTIFICATION OF A SETTLEMENT CLASS,
APPOINTMENT OF CLASS COUNSEL AND RELATED RELIEF**

I, Joseph G. Sauder, declare as follows:

1. I am a partner of the law firm of Sauder Schelkopf LLC in Berwyn, Pennsylvania, one of the proposed Class Counsel in this Action. I submit this declaration based on my personal knowledge and in support of Plaintiffs' Motion for Preliminary Approval of Settlement, Certification of a Settlement Class, Appointment of Class Counsel and Related Relief.

2. I was named by *The American Lawyer* to its 2021 Northeast Trailblazers. The honor recognizes 60 lawyers who are "truly agents of change." It "recognizes professionals in the Northeast who have moved the needle in the legal industry." The Northeast includes Maine, New York, New Jersey, Vermont, Massachusetts, Rhode Island, Connecticut, New Hampshire, and Pennsylvania. I was named by *The Legal Intelligencer* to its 2020 Pennsylvania Trailblazers list recognizing 31 lawyers who "have taken extra measures to contribute to positive outcomes . . . and who are truly agents of change." *The Legal* highlights my innovative work on advocacy as class counsel in large institutional sex abuse cover-ups, women's, and children's rights. I have been repeatedly recognized by my peers. Since 2011, I have been selected as a Pennsylvania *SuperLawyer*, a distinction held by the top 5% of attorneys in Pennsylvania, as chosen by their peers and through the independent research of Law & Politics.

3. After the 2020 South by Southwest Festival (the "Festival") was cancelled, Sauder Schelkopf LLC and its co-counsel, Cafferty Clobes Meriwether & Sprengel LLP ("Cafferty Clobes"), commenced an investigation into reports that SXSW refused to issue refunds for Festival Credentials. Consumers reported that SXSW uniformly declined refund requests on grounds its Participation & Credential Terms and Conditions ("PCT&C") included a "no refund" provision. SXSW instead offered consumers the right to defer their Credentials to a subsequent year in exchange for purportedly releasing all claims arising from the Festival's cancellation.

4. After speaking with dozens of consumers whose refund requests SXSU denied and analyzing the PCT&C and applicable law, Sauder Schelkopf, Cafferty Clobes, and Howry, Breen & Herman, LLP (“Howry Breen” and, collectively with Cafferty Clobes and Sauder Schelkopf, “Proposed Class Counsel”) filed this Action on April 24, 2020. My firm has been actively involved in all stages of this litigation, and in conjunction with Proposed Class Counsel, has advanced the litigation on behalf of Plaintiffs and the proposed Class.

5. Among other things, Proposed Class Counsel have taken considerable discovery conducted in this case, and reviewed and analyzed critical sales and deferral data and exemplar Class Member communications and releases, all of which greatly informed our eventual settlement discussions and mediation, and which proved invaluable in reaching the proposed Settlement.

6. On December 17, 2020, I and other co-counsel participated in a full-day mediation before mediator Dean Kilgore through the Zoom videoconferencing platform. After more than ten hours of arm’s-length negotiations the Parties reached an agreement on the material terms of the Settlement. Since then, I have been actively involved in our ongoing discussions aimed at memorializing the Settlement Agreement now before the Court, and my firm has assisted in drafting the Settlement Agreement, its exhibits, and the other papers in support of Plaintiffs’ Motion for Preliminary Approval of Settlement, Certification of a Settlement Class, Appointment of Class Counsel, and Related Relief.

7. Based on my experience in this case and in similar class litigation, I respectfully and unequivocally recommend that this Court find that the proposed Settlement is fair, reasonable, and adequate, and grant preliminary approval. I believe this settlement to be an excellent result for the Class, particularly at this stage of the litigation and when balanced against the risks of continued litigation.

8. I base this conclusion on my extensive background in litigation on behalf of consumers, and I am currently serving, and have served, as lead or co-lead counsel in class actions in courts across the country. *See, e.g., Jackson v. Viking Group, Inc.*, No. 8:18-cv-02356-PJM, ECF No. 46 (D. Md.) (class action settlement valued between \$30.45 million and \$50.75 million that provided a free replacement program to replace the allegedly defective sprinklers with non-defective sprinklers, and a claims program to reimburse those who experienced non-fire activations); *Cole v. NIBCO, Inc.*, No. 13-7871, ECF No. 227 (D.N.J. April 12, 2019) (\$43.5 million settlement related to allegedly defective plumbing products in which Sauder Schelkopf served as class counsel); *Amborn, et al. v. Behr Process Corp., et al.*, No. 17-cv-4464 (N.D. Ill.) (settlement on behalf of purchasers of allegedly defective deck resurfacing product; *In re Checking Account Overdraft Litig.*, MDL No. 2036 (S.D. Fla.) (\$55 million class action settlement with US Bank and \$14.5 million class action settlement with Comerica); *McCoy v. North State Aviation, LLC and NSA Holdings, Inc.*, No. 1:17-CV-346 (\$1.5 million settlement on behalf of hundreds of employees in North Carolina whose WARN Act rights were violated when they were abruptly fired without notice); *Klug v. Watts Regulator Co.*, No. 8:15-cv-61 (D. Neb.) and *Ponzo v. Watts Regulator Co.*, No. 8:16-200 (D. Neb.) (\$14 million settlement on behalf of homeowners with defective toilet connectors and water heater connectors manufactured by Watts); *Ajose, et al. v. Interline Brands, Inc.*, No. 14-cv-01707, (M.D. Tenn.) (\$16.5 million nationwide class action settlement related to defective DuraPro plumbing supply lines.); *Physicians of Winter Haven v Steris Corp.*, 1:10-cv-00264 (N.D. Ohio) (\$20 million nationwide class action settlement on behalf of surgical centers to recoup out of pocket expenses related to a recalled medical device); *Traxler v. PPG Indus., Inc.*, No. 1:15-cv-00912-DAP (N.D. Ohio); (\$6.5 million class action settlement on behalf of homeowners who purchased and used defective deck resurfacer). Attached as **Exhibit**

A is a true and correct copy of the firm resume of Sauder Schelkopf LLC.

9. This experience, coupled with the experience of co-counsel in this case, enabled our firms to undertake this matter and to successfully combat the resources of Defendants and their capable and experienced counsel

I declare under penalty of perjury under the laws of the United States of America that the foregoing facts are true and correct and that this declaration was executed on September 24, 2021.

/s/ Joseph G. Sauder
Joseph G. Sauder

EXHIBIT A

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Attorneys

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Matthew D. Schelkopf
Lori G. Kier
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Sonjay C. Singh

Practice Areas

Automobile Defects and False Advertising
Consumer Fraud Class Actions
Sexual Misconduct and Gender Discrimination
Employee Rights Class Actions
General Complex Litigation

Case Highlights

Joseph G. Sauder, Partner

Joseph G. Sauder handles complex cases on behalf of individuals, sexual misconduct victims, consumers, small businesses and employees. Mr. Sauder currently serves as court appointed lead counsel in state and federal courts across the country. He has successfully litigated cases against some of the largest companies in the world.



The Legal Intelligencer named Mr. Sauder in its [2020 Pennsylvania Trailblazers](#) list recognizing 31 lawyers who “have taken extra measures to contribute to positive outcomes . . . and who are truly agents of change.” *The Legal* highlights Joe’s innovative work on advocacy as class counsel in large institutional sex abuse cover-ups, women’s, and children’s rights. Since 2012, Mr. Sauder has been selected by the National Trial Lawyers Association as one of the Top 100 Trial Lawyers in Pennsylvania. Since 2011, Mr. Sauder has been selected as a Pennsylvania SuperLawyer, a distinction held by the top 5% of attorneys in PA, as chosen by their peers and through the independent research of Law & Politics. The American Lawyer Media, publisher of *The Legal Intelligencer* and the *Pennsylvania Law Weekly*, named Mr. Sauder as one of the “Lawyers on the Fast Track” a distinction that recognized thirty-five Pennsylvania attorneys under the age of 40 who show outstanding promise in the legal profession and make a significant commitment to their community.

From 1998 to 2003, Mr. Sauder was a prosecutor in the Philadelphia District Attorney’s Office where he tried hundreds of criminal cases to verdict. Mr. Sauder received his Bachelor of Science, magna cum laude in Finance from Temple University in 1995. He graduated from Temple University School of Law in 1998, where he was a member of Temple Law Review.

Mr. Sauder is admitted to practice before the Supreme Courts of Pennsylvania and New Jersey, the United States Court of Appeals for the Third Circuit, the United States District Courts for the Eastern District of Pennsylvania, the Middle District of Pennsylvania, the District of New Jersey and the District of Colorado. Mr. Sauder currently serves as a lead counsel in numerous class actions related to product, construction and automotive defect cases pending throughout the country.

Matthew D. Schelkopf, Partner

Matthew D. Schelkopf has extensive trial and courtroom experience throughout the United States, with an emphasis on class actions involving automotive defects, consumer protection, defective products and mass torts litigation.



The Legal Intelligencer named Mr. Schelkopf in its [2020 Pennsylvania Trailblazers](#) list recognizing 31 lawyers who “have taken extra measures to contribute to positive outcomes . . . and who are truly agents of change.” *The Legal* highlights Matthew’s work on behalf of clients who have been victimized by corporations. Since 2010, Mr. Schelkopf has been selected by Pennsylvania Super Lawyers as a Rising Star (a distinction held by the top 2.5% of attorneys in PA) and then a Pennsylvania Super Lawyer, as chosen by their peers and through the independent research of Law & Politics. In 2012, The American Lawyer Media, publisher of *The Legal Intelligencer* and the *Pennsylvania Law Weekly*, named Mr. Schelkopf as one of the “Lawyers on the Fast Track” a distinction that recognized thirty-five Pennsylvania attorneys under the age of 40 who show outstanding promise in the legal profession and make a significant commitment to their community. Mr. Schelkopf was also selected as a Top 40 under 40 by the National Trial Lawyers in 2012-2015.

Mr. Schelkopf began his legal profession as a criminal prosecutor with the District Attorney’s Office of York County. He quickly progressed to Senior Deputy Prosecutor where he headed a trial team responsible for approximately 300 felony and misdemeanor cases each quarterly trial term.

In 2004, Mr. Schelkopf then associated with a suburban Philadelphia area law firm, litigating civil matters throughout Pennsylvania and New Jersey. In 2006, he was co-counsel in a Philadelphia County trial resulting in a \$30,000,000.00 jury verdict in favor of his clients – the largest state verdict recorded for that year. Mr. Schelkopf currently serves as a lead and co-lead counsel in numerous class actions related to product and automotive defect cases pending throughout the country.

Outside of the office, Mr. Schelkopf enjoys spending time with his family, mountain and road biking, skiing and restoring classic automobiles. Three of his auto restorations have been featured in nationally circulated automotive publications.

Lori Kier, Counsel

With a broad litigation background, Lori G. Kier serves as Of Counsel to the firm. For nearly 25 years, Ms. Kier served as senior attorney at the U.S. Environmental Protection Agency in Philadelphia. Prior to her time at EPA, Ms. Kier was a staff attorney at the U.S. Court of Appeals for the Third Circuit and a Law Clerk to U.S. District Judge Fred I. Parker (D. Vt.).



At EPA, Ms. Kier developed and prosecuted enforcement cases (administrative and judicial) under multiple state and federal environmental statutes, and participated in all aspects of litigation, both as primary counsel and in support of the U.S. Department of Justice. She led various teams in developing enforcement initiatives, most prominently in the areas of municipal and industrial stormwater. Other statutory areas covered included: Clean Water Act, Emergency Planning and Community Right-to-Know Act, Federal Insecticide, Fungicide, and Rodenticide Act National Historic Preservation Act, Resource Conservation and Recovery Act, Safe Drinking Water Act, and Toxic Substances Control Act.

As an active participant in her local community, Ms. Kier is currently a member of the East Goshen Township Zoning Hearing Board and previously served on the Township's Planning Commission. She serves as a Democratic Committee Person and has also been a mock trial coach for two local high schools as well as a judge for high school, college, and law school mock trial and moot court competitions

Joseph B. Kenney, Associate

Joseph B. Kenney has experience representing consumers in class actions involving defective products, automotive defects, false and misleading advertising, and other consumer protection litigation.



Joe received his J.D., *cum laude*, from Villanova University School of Law in 2013. He was elected as a Managing Editor of Student Works for the Jeffrey S. Moorad Journal of Sports Law for his third year of law school. As a staff writer, his comment was selected for publication in the Spring 2012 Volume of the Journal. Prior to law school, Joe attended Ursinus College where he was a member of the men's varsity soccer team.

Joe is admitted to practice before the Supreme Courts of Pennsylvania and New Jersey and the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey. In 2017 and 2018, Joe was distinguished as a Pennsylvania SuperLawyer Rising Star.

Sonjay C. Singh, Associate

Through his law school studies and clerkships, Sonjay worked with litigators across the country to achieve optimal client outcomes in the areas of personal injury, products liability, medical malpractice, and employment discrimination. He is excited to continue fighting for plaintiffs with Sauder Schelkopf.



Sonjay received his J.D. with a certificate in Trial Advocacy and Litigation from the Temple University Beasley School of Law in 2020. As a law student, Sonjay was a member of the National Trial Team and won accolades at trial competitions nationwide. He also served as Vice President of the Student Bar Association and interviewed prospective professors as a student member of the Faculty Selection Committee. In his final year of law school, Sonjay was named the Stewart J. Eisenberg Scholar for his excellence in trial advocacy and received the Trial Program Award as the outstanding graduate in the field of civil litigation.

Sonjay enjoys spending time outdoors in his free time, whether hiking, skiing, kayaking, or rock climbing. He is active in local politics and served as an elected Democratic Committeeperson in Marple Township from 2017 to 2019.

Practice Area: Consumer Fraud Class Actions

The attorneys at Sauder Schelkopf have prosecuted and resolved numerous consumer fraud class actions on behalf of millions of consumers against nationally known corporations for deceptive and unfair business practices. Sauder Schelkopf's experience includes the following types of consumer fraud class action cases:

Automotive Defects – Automobiles are a major expense and consumers expect them to provide safe and reliable transportation for themselves and their family and friends. Some vehicles, however, may contain manufacturing or design defects that can pose a danger to our families and others on the road. Even if these defects do not create a potential safety issue, they might result in costly repairs to consumers.

Construction Defects – When consumers purchase a home, they expect the plumbing and other basic functions of the home to work without fail. Certain companies, however, are known to cut corners when designing and manufacturing their products. When an essential component of the home fails, it can lead to costly repair bills, damage to the surrounding property in the home, and high homeowner's deductibles.

Consumer Electronics Defects – As technology continues to evolve, more and more consumers purchase and depend upon electronic devices in their daily routines. From smartphones to state-of-the art drones, many manufacturers rush products to sale to take advantage of high consumer demand. As these products are rushed to market, consumers often are left between the difficult choice of paying expensive repair bills or placing their expensive product on the shelf to gather dust.

Medical Device Defects – Manufacturers of medical devices are held to high standards in the design, manufacturing, and marketing of their products. When a manufacturer learns of a defect in their medical device that could cause bodily harm to the end-user, the law imposes a strict duty on them to institute a recall immediately. Many times, however, manufacturers seek to place profits above the safety of their customers

Practice Area: Sexual Misconduct and Gender Discrimination

Sauder Schelkopf has a nationally recognized sexual misconduct practice with significant experience fighting for victims. Our former prosecutors have extensive experience investigating and trying cases. Sauder Schelkopf currently represents victims of clergy sexual abuse in dioceses throughout the country. We have numerous class action lawsuits pending throughout the country on behalf of sexual abuse survivors including:

- Male students and student-athletes who were victims of sexual misconduct by The Ohio State University team doctor Richard Strauss.
- Female victims of sexual misconduct as patients of Dr. George Tyndall, a former gynecologist at the University of Southern California who started in the 1990s.
- Female patients of gynecologist Dr. Patrick Sutton of Huntington Memorial Hospital in Pasadena, California accused of inappropriate sexual conduct and comments during examinations and deliveries.

Practice Area: Employee Rights Class Actions

The attorneys at Sauder Schelkopf have protected workers' rights. Employees are given numerous protections under state and federal law. The attorneys at Sauder Schelkopf has held employers accountable to their obligations under the law when hiring, employing, and firing their workers.

If employees face discrimination based on their race, color, country of origin, religion, gender, sexual orientation, the employer is violating the law. In addition, many employees do not receive their due compensation as numerous employers engage in wage and hour violations. Whether you are a potential whistleblower, or your case is associated with any technical or creative legal matter, the attorneys at Sauder Schelkopf are available to discuss your potential case.

Case Highlights

The attorneys at Sauder Schelkopf have played a lead role in cases throughout the country including:

- *In re Checking Account Overdraft Litig., (S.D. Fla.)* (class action resulting in a \$55 million settlement with US Bank; \$14.5 million settlement with Comerica);
- *Afzal v. BMW of North America, LLC, (D.N.J.)* (class action on behalf of purchasers and lessees of BMW M3 vehicles with S65 engines containing an alleged rotating assembly defect resulting in engine failure);
- *Ajose v. Interline Brands, Inc., (M.D. Tenn.)* (\$16.5 million nationwide class action settlement on behalf of purchasers of defective toilet connectors);
- *Rangel v. Cardell Cabinetry, LLC, (W.D. Tex.)* (\$800,000 settlement on behalf of hundreds of former employees of a Texas cabinetry maker for Worker Adjustment and Retraining Notification (WARN) violations when they were fired without notice);
- *In re: Outer Banks Power Outage Litigation (E.D.N.C.)* (\$10.3 million settlement on behalf of businesses impacted by massive power outage and evacuation cause by a bridge builder);
- *Guill, Jr. v. Alliance Resource Partners, L.P. et al (S.D. Ill)* (WARN Act class action on behalf of 200 coal miners);
- *Bang v. BMW of North America, LLC, (D.N.J.)* (nationwide class action settlement on behalf of hundreds of thousands of purchasers and lessees of certain BMW vehicles with N63 engines containing alleged oil consumption defect);
- *Traxler v. PPG Industries, Inc. (N.D. Ohio)* (\$6.5 million class action settlement on behalf of homeowners who purchased and used defective deck stain);
- *Physicians of Winter Haven v. Steris Corp., (N.D. Ohio)* (\$20 million class action settlement on behalf of surgical centers to recoup out-of-pocket expenses related to recalled medical device);

- *In re Stericycle Inc., Sterisafe Contract Litigation*, (N.D. Ill.) (\$295 million class action settlement on behalf of medical waste disposal customers of Stericycle regarding alleged automated price increases in violation of contractual terms);
- *Desio et al. v. Insinkerator et al.* (E.D. WA) (\$3.8 million class action settlement on behalf of homeowners who purchased defective water filters);
- *Davitt v. Honda North America, Inc.*, (D.N.J.) (class action nationwide settlement on behalf of hundreds of thousands of purchasers and lessees of Honda CR-V vehicles with alleged defective door lock actuators);
- *McCoy v. North State Aviation*, (M.D.NC) (\$1.5 million settlement on behalf of hundreds of former employees for Worker Adjustment and Retraining Notification (WARN) violations when they were fired without notice);
- *Henderson v. Volvo Cars of North America LLC*, (D.N.J.) (class action nationwide settlement on behalf of 90,000 purchasers and lessees of Volvo vehicles with defective GM4T65 automatic transmissions);
- *Klug v. Watts Regulatory Co., and Ponzo v. Watts Regulatory Co* (D. Neb.) (\$14 million settlement on behalf of homeowners with defective toilet connectors and water heater connectors manufactured by Watts);
- *Lax v. Toyota Motor Corporation* (N.D. Cal.) (class action on behalf of hundreds of thousands of purchasers and lessees of certain Toyota vehicles with alleged oil consumption defect);
- *Mendoza v. Hyundai Motor America, Inc.*, (N.D. Cal.) (class action on behalf of hundreds of thousands of purchasers and lessees of certain Hyundai Sonata vehicles with alleged connecting rod bearing defect resulting in engine failure);
- *Neale v. Volvo Cars of North America LLC*, (D.N.J.) (certified class action on behalf of hundreds of thousands of purchasers and lessees of certain Volvo vehicles with alleged defective sunroof water drainage systems);
- *Rivera v. Ford Motor Company*, (E.D. Mich.) (class action on behalf of hundreds of thousands of purchasers and lessees of certain Ford Focus vehicles with alleged defective Evaporative Emission Control (EVAP) systems causing sudden and unexpected engine stalling);

- ***Wallis v. Kia Motors America, Inc.*, (N.D. Cal.)** (class action on behalf of hundreds of thousands of purchasers and lessees of certain Kia vehicles with alleged connecting rod bearing defect resulting in engine failure);
- ***Whalen v. Ford Motor Co.*, (N.D. Cal.)** (class action on behalf of hundreds of thousands of purchasers and lessees of certain Ford and Lincoln vehicles with alleged defective MyFord Touch infotainment systems);
- ***Tolmasoff v. General Motors*, (E.D. MI.)** (\$6 million nationwide class action settlement on behalf of purchasers and lessees alleging overstated MPG);
- ***Yaeger v. Subaru of America, Inc.*, (D.N.J.)** (class action on behalf of hundreds of thousands of purchasers and lessees of certain Subaru vehicles with alleged oil consumption defect);
- ***Smith v. Gaiam*, (D. Colo.)** (\$10 million consumer class action settlement, which provided full relief to the class).
- ***International Brotherhood of Electrical Workers Local 98 Pension Fund v Encore*, (San Diego, CA)** (shareholder derivative settlement implemented industry-leading reforms to its risk management and corporate governance practices, including creating Chief Risk Officer and Chief Compliance Officer positions, various compliance committees, and procedures for consumer complaint monitoring)